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SUPREME COURT OF THE UNITED STATES

January 2002 Term

JOHN HOFFMAN AND MICHAEL HAHALYAK

Petitioners,

v.

JAMES JEFFORDS,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals For The District of Columbia Circuit, 025006

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT AND FOR IMMEDIATE DETERMINATION

Petitioners

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QUESTIONS FOR REVIEW

1. Did the Court Below in totally omitting to consider in its findings on lack of standing to sue that defendant's illegal caucusing abridged plaintiffs constitutionally protected rights to suffrage and party affiliation which resulted in the loss of majority control, render the findings of the court below, on the issue of standing to sue, without support in the record, an abuse of discretion and an error of law?

2. Did the failure of the Court below to consider the abridgment of plaintiffs' constitutionally protected party affiliation rights, under which rights an interference with the freedom of their political party is simultaneously an interference with the freedom of plaintiffs' rights as adherents, render the findings of the Court below on the issue lack of standing, without record support, an abuse of discretion and an error of law?

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court below on lack of standing to sue without support in the record, an abuse of discretion and an error of law.

II. Certiorari should be granted because of the failure of the Court below to consider the abridgment of plaintiffs' constitutionally protected party affiliation rights, under which rights an interference with the freedom of plaintiffs' political party is simultaneously an interference with the freedom of plaintiffs' rights as adherents, rendered the findings of the Court below on lack of standing to sue without record support, an abuse of discretion and an error of law. 21

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Constitution of the United States and Amendments:

Article I, Section 5 28

"....each House shall be the judge of the elections, returns, and qualifications of its own members."

Article I, Section 6, Cl. 1 28

"...for any Speech or Debate in either House, they shall not be questioned in any other place."

Article III, Section 2, Cl. 1 29

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,

the Law of the United States, and Treaties made, or which shall be made, under their Authority; --to all Cases affecting Ambassadors, or other public Ministers and...to Controversies to which the United States shall be a Party:....."

Amendment 14 (Adopted July 28, 1868) 1,3,21, 26

"No state shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States; nor shall any deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the law."

Amendment 17 (Adopted February 25, 1913)

1-3,23,26

"The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for

six years; and each Senator shall have one vote...."

Statutes: -- Vermont Election Law

17 V.S.A. Section 2361. "Consent of candidate 1, 3 9-10

.... Unless a consent is filed, the candidate's name shall not be printed on the primary ballot...."

17 V.S.A. Section 2363. "Separate party ballots [primary] (a) ....The voter shall vote for the candidates of one party only...." 1, 3

17 V.S.A. Section 2403. "Number of candidates; party names:....A person shall not sign more than one statement of nomination for the same office....the word "independent" may not be used as part of a party name; if no party is indicated, the word "independent" 1,3, 9-10

shall be printed on the ballot, and no candidate appearing on the ballot as a candidate of a political party shall also appear on the ballot as an "Independent."

17 V.S.A. Section 2412. **"Withdrawal of candidacy: A candidate who has been validly nominated ...** shall have a right to withdraw his candidacy up until 5:00 p.m. on the forty-seventh day before the day of the election..." 1,3

TREATISE: 52 Am. Jur. 2d Sections 132, 135. 20

PETITION FOR WRIT OF CERTIORARI

Basis For Jurisdiction

An appeal was filed and docketed in the United States Court of Appeals for the District of Columbia Circuit at No. 02-5006, September Term, on January 8, 2002, from the Order of Judge Royce C. Lamberth, United States District Judge For The District of Columbia, entered December 13, 2001. This petition for Certiorari which is filed under Rule 11 of this Court is to review by certiorari the order of the District Court before judgment is entered in the Court of Appeals. Jurisdiction is founded on a diversity of citizenship and amount and the existence of a federal question arising under the 14th and 17th Amendments to the Constitution of the United States, and the statutes of Vermont, 17 V.S.A. 2361, 2363, 2403, and 2412.

PETITION FOR WRIT OF CERTIORARI AND FOR IMMEDIATE DETERMINATION UNDER RULE 11, SUPREME COURT RULES; 28 U.S.C. 2101 (c)

Request For Immediate Determination

Petitioners' state that the within case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate determination in the Supreme Court.

The Senate of the United States is presently operating under the majority control of the Democratic party without constitutional authority.

The present majority control held by the Democratic party has been derived, not from the electorate as required under the 17th Amendment to the United States Constitution but solely because of Senator Jeffords' illegal and unconstitutional act in caucusing as an "independent," an act specifically forbidden under Vermont law in an instance where a candidate

has voluntarily selected another party on his ballot and had not exercised his right to withdraw, as provided for under the statute, if he found for any reason he could not serve the party. 17 V.S.A. 2403, 2361, 2363, and 2412. The illegal appellation "independent", was invoked by defendant, in consultation with Senator Thomas Daschle, then Democratic Minority Leader, and other Democratic leaders, as the instrument to break the tie vote in Senate party caucusing, and by this illegal instrument defendant would by his singular vote transfer majority power to the Democratic party in which Senator Daschle would emerge as Senate Majority Leader and defendant would be offered the chairmanship, as an "independent", of the Environment and Public Works Committee. In using this illegal instrument defendant knowingly violated Vermont law and abridged plaintiffs' constitutional rights to the integrity and protection of their political party affiliation and their suffrage rights under the 17th and 14th

Amendments. In Sleezy v New Hampshire, 354 U.S. 252, Court held that **"any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."**

Irreparable harm is therefore being done to this nation by this usurped power during the past and current operations of the Senate. The Senate is presently led by Senator Thomas Daschle, now Majority Leader of Senate, who is sidetracking important Republican sponsored legislation. This change of majority control has also extended itself to the effectiveness of every committee wherein the chairmanship of each committee, except the Ethics committee, has been transferred to the Democratic party, to whom an extra vote has been given in all committee deliberations, and by the exercise of this transferred power the Republican agenda has been seriously obstructed. This loss of power has evidenced

itself in many areas to the great harm of the Republican party. For example, the Judiciary Committee which is now newly chaired by Democratic Senator Patrick Healy of Vermont has appreciably slowed the approval of presidential appointees to the federal bench. Senator Jeffords' caucusing as an "independent", after being elected on the Republican ballot, has evaporated the meaning of party affiliation and he has, insofar as applied to the present facts, repealed the 17th Amendment to the United States Constitution.

STATEMENT OF THE CASE

This is a petition for review of the order and findings of judge Royce C. Lamberth of the United States District Court for the District of Columbia, entered on December 13, 2001, granting defendants motion to dismiss because of plaintiffs' lack of standing to sue.

Plaintiffs are registered Republican electors residing

in Pennsylvania. They seek by mandamus an order compelling defendant to announce in party caucusing his political party affiliation accurately and legally -- in accordance with the certificate issued by the Canvassing Committee of Vermont certifying to his election as the United States Senator "Republican".

The issues raised in the court below "as fundamental issues" requiring adjudication by the Court below, were left unanswered by the Court and by defendant in his memoranda. Plaintiffs, in their Motion For Summary Judgment, p. 4 averred:

> "The fundamental issues raised in this case...are: (1) whether the 17th Amendment which mandates that every United States Senator shall 'be elected by the people thereof, for a term of six years,' includes as a constitutionally protected right the political party as an integral inherent part of the 17th Amendment that is

> constitutionally protected .... and (2) Whether a candidate for the United States Senate can, after being elected and during the term of his elected office, alter his political party affiliation [as in party caucusing] without abridging the rights of the electors."

The above issues are important to the standing to sue issue since the standing to sue issue concerns the rights and duties of the respective parties and specifically whether plaintiffs rights were abridged by defendant and plaintiffs suffered personal injuries which petitioners specify in other portions of this brief.

On July 17, 2000, Senator James M. Jeffords signed the Consent of Candidate Form issued by the Secretary of State of Vermont in which James M. Jeffords specifically asked that his name be placed on the Republican Vermont primary ballot. Without his consent "the candidates name shall not be printed on

the ballot". 17 V.S.A. 2361.

On November 7, 2000 defendant was elected on the Republican party ballot in the general election. Prior to having his name placed on the general ballot Senator Jeffords had been given the right under Vermont election law to withdraw as a Republican candidate, 17 V.S.A. 2412, should he for any reason feel uncomfortable with his party affiliation. Senator Jeffords chose to have "Republican" placed beside his name on the ballot and confirmed this consent by his signature.

On May 24, 2001, some four months and three weeks after his installation in office, Senator Jeffords entered into a covert agreement surreptitiously negotiated with Senator Thomas Daschle, then Senate Minority Leader and other party leaders, in return for the chairmanship of The Environment and Public Works Committee, to caucus as an "independent" with the Democratic party for organizational purposes. By

his singular illegal and unconstitutional act in breaking the tie vote in party caucusing as an "independent", Senator Jeffords transferred control of the Senate of the United States to the Democratic party and reduced the Republican party to minority status. The negotiations were described in an article written by Edward Welsh and Helen Dewar of the Washington Post, (p. 6, Plaintiffs Response To Defendant's Motion To Dismiss):

> "Daschle, soon to be Senate majority leader, and Reid, the Democratic whip, waged their campaign of persuasion behind the scenes over about the last month in what one Democratic source described as 'a pretty clandestine operation.'"

Under Vermont law the appellation "independent" was not permitted once the candidate consented in writing to have his name placed on the ballot with a different party 17 V.S.A. 2403.

None of the secret negotiations and discussions between Senator Jeffords and the Democratic senators were made a part of debate or discussion. All parties agree that Senator Jeffords was duly elected and qualified under Vermont law as the United States Senator, Republican, of Vermont and that he was never elected as United States Senator, "independent" or Independent party.

On July 5, 2001 Senator Jeffords, in violation of the clear mandate of Vermont law, 17 V.S.A. 2403, caucused as an "independent" and **the next day** the power of majority control was officially transferred to the Democratic party. This transition of party control is described by defendant on pages 2 and 3 of his Motion To Dismiss:

> "On May 24, 2001, Senator Jeffords announced publicly his decision to leave the Republican party; become an independent, and caucus with the Senate

Democrats for organizational purposes. On June 5, 2001, after the Senate's return from Memorial Day recess, Senator Jeffords attended the Democrat's weekly policy caucus luncheon for the first time, and, on the next day, the Democrats assumed majority control of the Senate....the presiding officer recognized Senator Daschle the Democratic Leader to speak first as the leader of the party with dominant representation in the Senate...the Senate then elected a new President Pro Tem and new party secretaries,...and **Democrats assumed the chairs of all Senate Committees....and on June 29, 2001,...the Democrats (were given) one member majorities on all committees** (except for the Select Committee on

ethics...) and on July 10, 2001, the two party conferences assumed new committee assignments for their members, which included the **designation of Senator Jeffords as the Chair of the Senate Environment and Public Works Committee...."**

No court action was necessary to effectuate the above transfer of power. Senator Jeffords caucusing announcement triggered the above response.

I. ARGUMENT

CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT BELOW TOTALLY OMITTED TO CONSIDER IN ITS FINDINGS ON LACK OF STANDING TO SUE, DEFENDANT'S ILLEGAL CAUCUSING WHICH ABRIDGED PLAINTIFFS' RIGHTS TO PARTY AFFILIATION AND SUFFRAGE, WHICH LED TO LOSS OF MAJORITY CONTROL,

RENDERED ITS FINDINGS WITHOUT SUPPORT IN THE RECORD, AN ABUSE OF DISCRETION AND AN ERROR OF LAW.

Nowhere, in its 19 page opinion, does the Court below consider or discuss the central issue in this case pertaining to the caucusing by defendant as an independent and its impact **on the issue of standing to sue.** As a result, the courts findings pertaining to the lack of standing without considering the most important issue in the case bearing directly on standing, renders the findings unsupportable and an abuse of discretion and an error of law. A review of the Court's findings when viewed in the light of the omissions of the Court in dealing with the adverse impact upon the Republican party and upon plaintiffs as a result of the transfer of majority control, will reveal the untenable nature of the findings made by the Court below.

1. Page 12, the Court states that plaintiffs: "...have failed to show an actual or imminent harm as a result of Senator Jeffords' decision to change political parties." **Reply:** had the court considered the impact of defendant's independent caucusing the court would have concluded that **"the next day"** after the caucusing the **majority power** of the senate was transferred to the Democratic party. The harm was imminent and actual and indeed devastating

2. Page 12, the Court states: "First, with respect to their claim that Senator Jeffords has stymied the Republican national program, the court finds that this injury is too speculative and conjectural for it to constitute an actual injury under Article III." **Reply**: had the court considered the adverse impact resulting in the transfer of majority control, it would have concluded that "Senator Jefford's had stymied the Republican national program since no one can deny that majority

control is absolutely necessary in successfully enacting legislation. The stymieing was a nationally recognized fact. The Pittsburgh Post Gazette, p.10 of Plaintiffs Response to Defendant's Motion to Dismiss, referred to it "as a political earthquake" which stifled the Republican national program:

> "Perhaps the most important change will be that Democrats will be in charge of the Judiciary Committee, which will hold hearings on any Bush nominees to the U.S. Supreme Court. That significantly lessens the likelihood that Mr. Bush will try to install Supreme Court justices who would be bent on undoing precedents on school prayer, free speech or abortion rights."

3. Page 12, the court states that: "there is absolutely no way of knowing what legislation, if any, would be enacted had Senator Jeffords remained a member of the Republican party." **Reply:** had the court

considered the issue omitted in its opinion it would have concluded that with majority control there would be a more certain way of knowing what would be enacted. We are not dealing with certainties.

4. Page 14: the Court states "plaintiffs have not shown that Senator Jeffords has personally prevented any legislation, let alone the Republican agenda from being enacted." **Reply:** had the court considered the impact of defendant's single vote in transferring majority control, it would have readily revealed that the Republican party would have difficulty sledding in enacting legislation since the most essential machinery to enacting legislation had been deprived plaintiffs by defendant's illegal caucusing. Majority control is the well known sine qua non to success in legislating that each party strives for at tremendous cost.

5. Page 15: the court states "that Senator Jeffords is just one out of one-hundred Senators, as such his single vote could not by itself defeat or result in the

enactment of any legislation." **Reply:** Had the court considered the adverse impact on the results of the caucusing it would have found that It was by no means the single vote in **legislating** that harmed the Republican party since there are 100 senators, but it was the single vote of Senator Jeffords in **caucusing** out of the 100 that transferred the control of the Senate to the opposition party. Paragraph 6 of Plaintiffs Amended Complaint avers that "Mr. Jeffords at all times had the freedom to vote under the Republican label in the identical manner that he intends to vote as an 'independent'. His abandonment rather referred to his transfer of power to the Democratic party by polling as an "independent". And in paragraph 8, plaintiffs aver that "they have filed this action without any intent or desire to interfere with Jefford's discretionary voting authority as a United States Senator".

6. Page 16: the Court states "there are numerous

reasons -- completely independent of Senator Jeffords why certain legislation may not become law...." **Reply:** had the court considered the issue omitted in its findings it would have concluded that by far the best reason was defendant's personal and singular act in transferring majority control to the Democratic party.

7. Page 15: the Court states: "consequently, there is no way for the plaintiffs to show that the alleged setback to the Republican national program is fairly traceable to Senator Jefford's decision to leave the party. **Reply:** Again the court fails to consider defendant's illegal caucusing in transferring majority control. The loss of majority control is a major setback to any party.

8. Page 18: the Court states that "second, with respect to the claim that Senator Jeffords violated Vermont election law by changing parties after the election, the Court finds that to the extent the plaintiffs have failed to

identify a specific injury by this allegedly illegal action, there is no way for the Court to ascertain whether such injury is fairly traceable to the action of Senator Jeffords. **Reply: Had Senator Jeffords caucused as required by the law majority control would never have been transferred to the opposition party**. This injury is directly traceable to Senator Jefford's singular act in knowingly caucusing as an Independent. The resulting transfer of control obviously injured the Republican party and its adherents. In Sleezy v New Hampshire, supra, it was held that an interference in the freedom of the party is simultaneously an interference with the freedom of its adherents,

9. Page 18: the Court states

> "The plaintiffs have not shown how the Court can redress or even alleviate those harms, referring to anti-raiding statutes." Adding "there is no indication that a Court

order requiring him to switch back to the Republican party will restore or raise the confidence of the electorate. The plaintiffs have completely failed to show how this Court possesses the power to redress these injuries."

Reply: The redress is by a simple ministerial act performed by Senator Jeffords in accurately caucusing as a Republican as specified in his certification prepared by the Vermont Canvassing Committee. This ministerial act alone would by mandamus retransfer control to the Republican party the **next day. 52 Am Jur 2d, Section 132.**

10. Page 17 the court states: "...the plaintiffs' have not shown how this alleged violation (their constitutional right to freedom of association) took place as a result of Senator Jeffords change of political parties." **Reply:** Again the court fails to consider the fact that by the

illegal caucusing control was transferred to the opposition party. This transfer of control by defendant's illegal act abridged plaintiffs' rights to freedom of association and the party of its integrity.

II. Certiorari should be granted in this case because of the failure of the lower court to consider the essential fact that the political affiliation of an individual is a constitutionally protected right or interest under the 14th and 17th Amendments to the United States Constitution and that any interference with the freedom of the individual's political party is simultaneously an interference with the freedom of its individual adherents, rendered the findings of the Court on lack of standing to sue, without support in the record, an error of law and an abuse of discretion. As stated, in Sleezy v New Hampshire, supra, p. 251, which is fully quoted in N.A.A.C.P. v Button, supra:

"Equally manifest as **a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association.** This right was enshrined in the First Amendment of the Bill of Rights. **Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."**

The essence of represented government is premised on the fact that the people cannot speak en masse and the right to choose a representative who represents **certain ideas and beliefs** is every citizens

portion of sovereign power Harris vs. Shanahan 192 Kan 183, 387 P 2d 771, 789.

By caucusing as an "independent" Senator Jeffords in effect repealed the 17th Amendment as applied to the facts in this case. **For of what value is the 17th Amendment if the vote of the party which elected Senator Jeffords can be literally evaporated or stated another way "rejected" or "repealed" after defendant is elected and during his term of office.**

Political parties are institutions of very great importance under our form of government. They are, in fact, the effective instrumentality's by which the will of the people may be made vocal, and the enactment of laws in the will of the people may be made vocal and are so potent have they become in determining the measures and in administering the affairs of government that they are now regarded as inseparable from, if not essential to a republican form of

government." Smith v Allwright, 321 U.S. 649: N.A.A.C.P. v Alabama 357 U.S. 449, 2 Led 2d 1488. 78 SCt 1163, formally enunciated the right to freedom of association and elevated it to its present status as a separate constitutional right emanating from the First Amendment, and made applicable to the states by the Due Process Clause of the 14th Amendment.

The First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas, which freedom encompasses the right to associate with the political party of ones choice. Healy v Valeo, 424 US 1, 48 L Ed; 659, 92 SCt 612. This freedom is protected not only against heavy-handed frontal attack, but is also protected from being stifled by more subtle government interference, Gibson v Florida Legislative Investigation Committee, 372 US 539, 9 Led 2d 929, 83 S Ct 889; Bates v Little Rock, 361 US 516, 4 Led 2d

480, 80 S Ct 412. Competition among parties on government policies is at the core of the electoral process.

The right to vote includes the right to cast an effective vote, Anderson v Celebrezze 460 U.S. 780, 75 Led 2d 547, 103 SCt 1564 (1983); Abers-Schaffers v Distufano (CCA1, RI) 37 F3rd 720 (1994). It is the duty of the state to protect the integrity of the election process. It is for this reason that political parties must be qualified to operate in each state and why in this case defendant cannot assert his party as independent since there is no "Independent Party" in Vermont nor can one be "independent" under Vermont law where he had selected another party on his ballot. Constitutional rights would be of little value if they could be indirectly denied, Dunn v Blumstein 405 U.S. 330, 31 Led 2d 274, 92SCt 995.

A diluted vote is an ineffective vote. In Reynolds v Sims

372 U.S. 533, 12 Led 2d 506, 84 SCt 1362 (1964) the Court stated that the **diluting of a vote impairs the constitutional rights under the 14th Amendment just as much as invidious discrimination** based on race. In the present case Senator Jeffords not only diluted but entirely negated the power of the vote of the individual and by it abridged the rights of the people. In United States v Classic, supra, p. 319, the Court stated: "unless the constitutional protections of the **integrity of elections** extends to primary elections Congress is left powerless to effect the constitutional purposes and the popular choice of representatives is stripped of its constitutional protection." Justice Douglass in a concurring opinion on this issue of dilution stated:

> **"...any attempt to defile the sanctity of the ballot cannot be viewed with equanimity. The fact that a particular form of pollution has only an indirect effect on the final**

election is immaterial. The fact that it occurs in a primary election or nominating convention is likewise irrelevant."

III. PLAINTIFFS CLAIM IS JUSTICIABLE

Petitioners' submit that each of the aspects of justiciability have been met by petitioners.

1. With regard to redressability:

the admitted facts disclose that after defendant had caucused as an independent the transfer of majority control **passed the very next day** to the Democratic party. It was by a simple announcement made by Senator Jeffords in caucusing as an Independent that the majority power of the Senate was transferred to the Democratic party. It will be by a similar announcement to be made by Senator Jeffords as a Republican that majority control will be returned to the Republican party. Mandamus is the proper remedy for the performance of such a ministerial announcement. 52

Am Jur 2d Section 131. Should defendant feel that he cannot return as a Republican in accordance with the mandate of the electorate his alternative, it seems, would be to resign and seek re-election by a legally recognized party espousing his policies..

2. **As to the political question**:

Both parties admit that Senator Jeffords was duly qualified and duly elected as the United States Senator from Vermont on the Republican ballot under the 17th Amendment. There is therefore no dispute as to his qualifications and election.

3. **As to the issue regarding speech and debate**:

under Article I, Section 6, Clause 1. The negotiations, being secret, were never made a part of speech and debate on the Senate floor. The announcement was given to the media and the public approximately two weeks before his caucusing announcement.

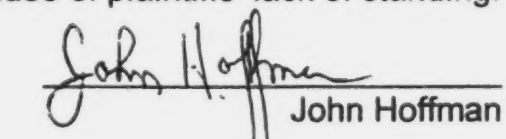
4. **As to standing under Article III, Section 2, Clause 1, of the United States Constitution requiring a Case and Controversy. Petitioners in this case suffered personal injuries** when defendant abridged their constitutional rights. **Plaintiffs had expended their personal efforts in soliciting votes, in accommodating voters, and in incidental expenses, all of which efforts were frustrated when Senator Jeffords singularly transferred control to the opposition party. This loss will require of plaintiffs further expenditures of time, effort, and money, to regain control.**

Accordingly, plaintiffs have suffered, in addition to their personal injuries immediately above described (1) a personal injury in defendant's abridgment of their constitutional rights to their party affiliation and suffrage; (2) this injury was caused by defendant's sole act in illegally caucusing as an "independent" and in

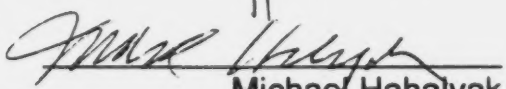
forsaking his political party and (3) this injury is redressable the next day after defendant caucuses as a Republican -- a simple ministerial act that an action in mandamus will legally support..

CONCLUSION

For the foregoing reasons, petitioners' pray that a writ of certiorari issue to The United States Court Of Appeals For The District of Columbia Circuit, 025006 to review to review under Rule 11 of the Court the order and findings of judge Royce C. Lamberth of the United States District Court for the District of Columbia, entered on December 13, 2001, granting defendants motion to dismiss because of plaintiffs' lack of standing.



John Hoffman



Michael Hahalyak

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOHN HOFFMAN AND MICHAEL HAHALYAK, Plaintiffs

v.

JAMES JEFFORDS, Defendant.

Civil Action Number 01-1190 (RCL)

This matter comes before the Court on the defendant's motion to dismiss the plaintiffs' amended complaint and the plaintiffs' motion for summary judgment. Specifically, the defendant argues that the amended complaint should be dismissed pursuant to Rule 12(b)(1) because the Court lacks jurisdiction to adjudicate the plaintiffs' claims, pursuant to Rule 12(b)(5) because of insufficiency of process, and pursuant **to** Rule 12(b)(6) because the plaintiffs have failed to state a claim upon which relief can be granted. The plaintiffs, in contrast, argue that they are entitled to judgment as a matter of law. **After**

athorough review of the amended complaint, the parties' memoranda, and the applicable law, the Court finds that the defendant's motion should be GRANTED and the plaintiffs' motion should be DENIED.

I. BACKGROUND

The plaintiffs in this case, two Republicans from Pennsylvania, seek judicial review of Senator James M. Jeffords' decision to leave the Republican party. In the amended complaint, The plaintiffs claim that Senator Jeffords violated Vermont election laws and the Fourteenth and Seventeenth Amendments to the United States Constitution by changing his political party affiliation after being elected as a Republican. The plaintiffs want this Court to order Senator Jeffords to reinstate his affiliation with the Republican party and to enjoin him from caucusing with the Democratic members of the Senate. The voters of Vermont first elected James M. Jeffords to the United States Senate in 1988. After being re-elected in 1994, Senator Jeffords again sought and won the Republican nomination in

Vermont's September 12, 2000 primary election. Senator Jeffords retained his seat in the Senate by winning the November 7, 2000 general election, where he ran as the Republican nominee. On January 3, 2001, the President of the Senate presented the Senate with a certificate of election signed by the Governor of Vermont certifying Senator Jeffords' election to a new six-year term. At the opening of the 107"" Congress, Senator Jeffords returned as a member of the Republican Conference, which encompassed all Republican members of the Senate. In fact, Senator Jeffords had at all times during his tenure in the Senate caucused with the other Republican members.

On May 24, 2001, however, Senator Jeffords announced his decision to leave the Republican party, become an Independent, and caucus with the Senate Democrats for organizational purposes. Senator Jeffords' decision to caucus with the Senate Democrats was particularly important-and controversial-because the 2000 elections resulted in a Senate composed of 50 Republicans and 50

Democrats. The 2000 elections thus yielded, for only the third time in American history, an equal balance of power between the two principal political parties.' Even though there was an equal number of Democrats and Republicans in the Senate, the Republicans had gained working control of the Senate because of the Vice President's power, as President of the Senate, to cast tie-breaking votes. Accordingly, Republicans took working control of the Senate after Chief Justice Rehnquist swore in Richard B. Cheney, who is a Republican, as Vice President on January 20, 200 1. Moreover, pursuant to an organizational agreement entered into by both parties, an equal number of Republican and Democratic members served on all committees, with Republican senators assuming the committee chairs. After separate deliberations by the Republican and Democratic caucuses, committee members from each party were appointed on January 25 and January 30, 2001. By changing political parties, Senator Jeffords enabled the Democratic party to assume working control of the senate.

On June 5, 2001, after returning from the Memorial Day recess, Senator Jeffords attended the Democrats' weekly policy caucus luncheon for the first time, and, on the next day, the Democrats took control of the Senate. On June 6, 2001, the presiding officer recognized Senator Tom Daschle, a Democrat, as the leader of the party with dominant representation in the Senate. As the majority party, the Democrats elected a new President pro tempore and assumed the chairs of all Senate committees. Additionally, pursuant to a new organizing resolution, the Democrats gained a one-member majority on all committees except for the Select Committee on Ethics, which always has equal party representation. 'The Senate was also equally divided in 1881 and 1953.

The plaintiffs, who describe themselves as registered Republicans, **filed** the instant suit shortly after Senator Jeffords announced his decision to switch political parties. In the amended complaint, the plaintiffs state that jurisdiction is founded on diversity of citizenship and

because of federal questions arising under the Fourteenth and Seventeenth Amendments to the United States Constitution. The plaintiffs allege that they "have been adversely impacted in that the Republican program to be ushered in by the Republican party nationally has been seriously obstructed by the defendant's unauthorized act in altering party affiliation." They further claim that Senator Jeffords' decision to change parties "destroys the confidence of the electorate,"'destroys the foundation of good government by lowering the standard of integrity of its representatives," 66 promotes party raiding which would seriously weaken the stability of the elective process," "undermines the very purpose of anti-raiding statutes," "eliminates the heart of a well balanced political party," and was without the approval of the individuals that voted for him in the Vermont elections. The plaintiffs have moved for summary judgment on each of these claims.

In response to the amended complaint, Senator Jeffords **filed** a motion to dismiss on September 10, 2001. In the

motion, he argues that there are several independent bases upon which this Court should dismiss the plaintiffs' amended complaint. Senator Jeffords **first** contends that the action should be dismissed because the Court does not have jurisdiction to -adjudicate the plaintiffs' claims. In particular, Senator Jeffords asserts that the plaintiffs lack standing to bring this lawsuit and that the Speech or Debate Clause of the Constitution bars their claims against him. Next, Senator Jeffords argues that the amended complaint should be dismissed because the plaintiffs failed to serve properly the U.S. Attorney for the District of Columbia, as required by Rule 4(i) of the Federal Rules of Civil Procedure. Finally, Senator Jeffords contends that the action should be dismissed because it is nonjusticiable under the political question doctrine.

11. ANALYSIS

The Supreme Court has made it clear that before a federal court can consider the merits of a claim, the person seeking

to invoke the jurisdiction of the court must establish that they have standing to initiate the lawsuit. Whitmore v. Arkansas, 495 U.S. 149, 155 (1990.). The burden of showing that this standing requirement is met rests squarely on the party bringing the action. FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990) (finding that "petitioners in this case must allege facts essential to show jurisdiction."). In order to show that standing exists,"the party who seeks the exercise of jurisdiction in his favor" must clearly "allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." Id. If the plaintiff fails to make the necessary allegations, then the Court must find that the party does not have standing to bring the lawsuit. Id. (citing McNutt v. General Motors Acceptance Co Ep., 298 U.S. 78, 189 (1936)), See also U.S. v. HUs, 515 U.S. 737, 743 (1995). Moreover, once a court finds that a plaintiff does not have standing to initiate an action, it must dismiss the complaint. Warth v. Seldin, 422 U.S. 490, 502 (1975) (noting that if "the plaintiff's standing does not adequately

appear from all materials of record, the complaint must be dismissed."). Courts should not consider the merits of the plaintiff's claim in determining whether he has standing to bring the lawsuit. Id. at 500 (recognizing that "standing in no way depends on the merits of the plaintiffs contention that particular conduct is illegal"); Whitmore v. Arkansas, 495 U.S. 149, 15 5 (1990) (stating that "we thus put aside for now Whitmore's Eighth Amendment challenge and consider whether he has established the existence of a 'case or controversy. '"). In fact, "for purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth, 422 U.S. at 501; AFL-CIO v. Pierce 697 F.2d 303, 305 (D.C. Cir. 1982) (noting that "for purposes of the standing issue, we accept as valid Congressman Sabo's pleaded legal theory."). Based on this legal standard, the Court will **first** address the threshold jurisdictional issue of standing. In making that

determination, the Court will assume that the facts alleged in the complaint are true. Only after finding that the plaintiffs have standing will the Court evaluate the other issues raised in the defendant's motion to dismiss and the plaintiffs' motion for summary judgment. Warth, 422 U.S. at 498 (recognizing that standing "is the threshold question in every federal case, determining the power of the court to entertain the suit."). If, however, the Court concludes that the plaintiffs do not have standing, it will dismiss the complaint without any further discussion of the other issues raised in the two motions. FW/PBS Inc., 493 U.S. at 230 ("We do not reach the merits of the adult entertainment and adult cabaret petitioners' challenges to the civil disability provision, § 41 A-5(a)(l 0), and the provision disabling individuals residing with those whose licenses have been denied or revoked, § 41A-5(a)(5), because petitioners have failed to show they have standing to challenge them,"); Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 475-76

(1982) (stating that 64of one thing we may be sure: Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States.").

A. **Standing**

Article 111, § 2, of the United States Constitution explicitly provides that federal courts may only adjudicate actual "Cases" or "Controversies." Arizonans For Official English v. Arizona , 520 U.S. 43, 64 (1997) (noting that "the Constitution **confines** federal courts to the decision of 'Cases' or 'Controversies. '"); Allen v. Wright, 468 U.S. 737, 750 (1984) (same). Accordingly, "[under the rubric of Article III jurisprudence, the federal courts have developed a cluster of doctrines such as standing, mootness, ripeness, political question, and the like by which to give meaning to Article III's case-or-controversy requirement." Page v. Shelby, 995 F. Supp. 23, 26 (D.D.C. 1998). See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (finding that "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of

Article III. "All of these doctrines place limitations on the jurisdiction of federal courts. Allen, 468 U.S. at 750. Specifically, "[i]n its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth, 422 U.S. at 498. That is, "[i]n essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Id. In order to establish standing to sue under Article III of the Constitution, plaintiffs must demonstrate that: (1) they have suffered an injury that is both (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the conduct of which they complain; and (3) the injury is likely to be redressed by a court decision in their favor.' Skaggs v. Carle, 110 F.3d 831, 834 (D.C. Cir. 1997) (citing Lujan, 504 U.S. at 560-6 1). The plaintiffs have the burden of establishing each of these elements. Id. Moreover, "[since they are not mere pleading requirements

but rather an indispensable part of the plaintiff s case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." Lujan, 504 U.S. at 555. This means that for purposes of a motion to dismiss, general factual allegations of injury resulting from the defendant's conduct may be sufficient since the court assumes that general allegations in the complaint embrace specific facts that are necessary to support the claim. Id at 561.

1. Personally Suffered A Particularized Injury That Is Not Conjectural

a) Particularized Injury It is by now well established that "at an irreducible minimum, Art. III requires the party who invokes the court's authority to show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant[.]" Valley Forge Christian College, 454 U.S. at 472; Animal Legal Defense

Fund v. Glickman, 154 F.3d 426, 433 (D.C. Cir. 1998) (noting that "the key requirement ... is that the plaintiff have suffered his injury in a personal and individual way .]"). As a result, the Supreme Court has "consistently stressed ' To the extent some of the plaintiffs' claims are based on Vermont election law, the Court must look to that state's law to determine whether the plaintiffs have standing to bring those claims. Seguros Commercial America v. American President Lines, Ltd., 105 F.3d 198 (5" Cir. 1996) (noting that "a federal court exercising diversity jurisdiction must look to state law to determine standing to sue[.]"). There is, however, no distinction between federal law and Vermont law regarding standing. Agency of Natural Resources v. United States Fire Ins. Co., 2001 WL 147201 (Vermont 200 1) (noting that the Supreme Court of Vermont has adopted the test articulated by the Supreme Court of the United States concerning standing); Parker v. Milton, 726 A.2d 477, 480 (Vermont 1998) (same). Thus, the analysis on the issue is the same for all of the plaintiffs' claims that a

plaintiff s complaint must establish that he has a personal stake in the alleged dispute, and that the alleged injury is particularized as to him." Raines v. Byrd, 521 U.S. 81 1, 819 (1997). In fact, the Supreme Court has explicitly stated that "[by particularized, we mean that the injury must affect the plaintiff in a personal and individual way."

Lujan, 504 U.S. at 561. Thus, for example, in the equal protection context, "even if a governmental actor is discriminating on the basis of race, the resulting injury accords a basis for standing only to those persons who are personally denied equal treatment by the challenged discriminatory conduct." U.S. v. Hays, 515 U.S. 737, 743-44 (1995); Moose Lodge No. 7 v. Irvis, 407 U.S. 163, 167 (1972) (finding that "in this case appellee was not injured by Moose Lodge's membership policy since he never sought to become a member."). Moreover, this Court recently ruled that a plaintiff who was challenging the Senate's cloture rule did not have standing to bring the suit because he failed to demonstrate that he has sustained or will immediately

sustain direct harm as a result of the rule. Page, 995 F. Supp. at 27-28. In that case, the court specifically noted that the plaintiff "does not indicate how he personally has been or will be injured if' legislation he favors "fails to become law." Id. at 28.

Injuries that are suffered by the public at large are not particularized injuries within the **confines** of Article 111. The Supreme Court has "consistently held that a plaintiff raising only a generally available grievance about government--claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large--does not state an Article III case or controversy." Lujan, 504 U.S. at 573-74; Valley Forge, 454 U.S. at 482-83 (noting that the Supreme Court "repeatedly has rejected claims of standing predicated on the right possessed by every citizen to require that the Government be administered according to law[.]"); Massachusetts v. **Mellon,** 262 U.S. 447 (1923) (same). For instance, in Crist

v. Commission on Presidential Debates, the Second Circuit noted that several circuits have "concluded that a voter fails to present an injury in fact when the alleged harm is abstract and widely shared[.]" 262 F.3d 193, 195 (2d Cir. 2001). Moreover, the First Circuit has specifically held that"the harm done to the general public by corruption of the political process is not a sufficiently concrete, personalized injury to establish standing." Becker v. FEC, 230 F.3d 381, 389-90 (lst Cir. 2000).

The Court finds that in the instant case the 'plaintiffs have failed to show that they personally have suffered or will suffer any injury as a result of Senator Jeffords' decision to leave the Republican party. First, with respect to the plaintiffs' claim regarding the Republican national program, the Court finds that while the plaintiffs may have sincere beliefs concerning such legislation, it does not follow that they will personally be injured if Congress fails to enact the legislation. For instance, in their opposition to the motion to dismiss, the plaintiffs cite abortion rights and school prayer

as two such issues that they think were adversely impacted by Senator Jeffords' decision to switch parties. The plaintiffs do not, however, demonstrate how they personally will be affected by the lack of legislation relating to these issues. That is, the plaintiffs may feel strongly about abortion rights and school prayer, but based on the amended complaint there is no indication that they have any personal stake in potential legislation concerning the issues.' ' It is also doubtful that such an interest would be a legally cognizable injury for purposes of Article 111. In other words, it is doubtful that anyone has a right to certain legislation being enacted by Congress.

Second, with respect to the plaintiffs' claims concerning the violation of Vermont election laws, the plaintiffs have again failed to show how they personally are injured by this alleged violation of the law. Plaintiffs did not, nor could they, vote in either the primary or general election in which Senator Jeffords ran for office. Consequently, they had absolutely no personal stake whatsoever in the political

party he was affiliated with at the time of the elections. The plaintiffs may have wanted Senator Jeffords to be re-elected because he was a Republican, but that does not mean that they have personally suffered an injury as the result of him changing parties after the election.

Third, with respect to the claims dealing with the "right to freedom of association," the plaintiffs have utterly failed to allege how their rights have been violated by Senator Jeffords' decision to change parties. In fact, the plaintiffs have made no effort to explain how their individual right to associate with others was affected by Senator Jeffords' decision to leave the Republican party. Indeed, the Court sees no basis upon which the plaintiffs could claim that their First or Fourteenth Amendment rights have been violated. As such, the Court **finds** that they have not suffered any personal injury in this regard.

Finally, with respect to the plaintiffs' assertion that Senator Jeffords' decision has diminished the **confidence** of the electorate, destroyed the foundation of good

government, promoted party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that the plaintiffs have not demonstrated how they are personally affected by such events in a way different than the public at large.

To satisfy the **first** requirement for standing, it is not enough for the plaintiffs merely to allege that Senator Jeffords has destroyed the foundation of good government and promoted party raiding. Even if those allegations are true, the plaintiffs still must show that they personally were affected by such events in a manner different from the public at large. Lujan 504 U.S. at 573-74; Becker, 230 F.3d at 389-90. They have clearly failed to do so in this case.

b) Actual Injury

In order to have standing, a plaintiff must allege an injury that is "distinct and palpable, and not abstract or conjectural or hypothetical." Allen, 468 U.S. at 75 1. That is, "to constitute injury in fact, the harm alleged must be actual and imminent, not conjectural and speculative." Page, 995

F. Supp. at 28. Thus, for example, in Paige v. Shelby, this Court ruled that a complaint containing unspecified allegations regarding legislation desired by the plaintiff is "precisely the kind of vague, conjectural and hypothetical harm which cannot confer standing." Id. Moreover, as the First Circuit recognized in Becker, voters' "concern for the corruption of the political process is not only widely shared, but is also of an abstract and indefinite nature, comparable to the common concern for obedience of the law." **Becker,** 230 F.3d at 390. As such, the First Circuit ruled that the voters challenging the action by the FCC did not have standing to bring the claim. Id.

The Court **finds** that the plaintiffs in the instant case have failed to show an actual or imminent injury as a result of Senator Jeffords' decision to change political parties. First. with respect to their claim that Senator Jeffords has stymied the Republican national program, the Court finds that this injury is too speculative and conjectural for it to constitute an actual injury under Article 111. There is

absolutely no way of knowing what legislation, if any, would have been enacted had Senator Jeffords remained a member of the Republican party. This speculation becomes especially apparent considering the plaintiffs identified specific issues-such as abortion and school prayer-without citing any legislation pending at the time Senator Jeffords decided to switch parties.

Thus, it is pure conjecture on the plaintiffs' part that legislation dealing with these issues or any others would have been enacted had Senator Jeffords remained a Republican.

Second, with respect to the claims that Senator Jeffords violated Vermont election law, the Court **finds** that the mere allegation that Senator Jeffords violated Vermont election law when he changed parties is not enough to constitute an actual injury under Article 111. Allen, 468 U.S. at 75 1. Rather, the plaintiffs must show that they have incurred some distinct and palpable injury as a consequence of Senator Jeffords' allegedly illegal decision to switch parties.

The plaintiffs have not done so in this case.

Third, with respect to the allegations regarding the right to association, the Court finds that since the plaintiffs have failed to allege how their rights have been violated, it is impossible for the Court to discern any actual or imminent injury to the plaintiffs. While the violation of the plaintiffs' right to freedom of association would qualify as an actual injury, before the Court can make that finding the plaintiffs must articulate in the complaint how their constitutional right was violated. The plaintiffs, as stated above, have not done so in the instant case. As such, the Court finds that the plaintiffs have not shown an actual or imminent injury relating to this claim.

Finally, with respect to the claim that Senator Jeffords' action has diminished the confidence of the electorate, destroyed the foundation of good government, promoted Party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that these injuries are, as the First Circuit ruled in Becker too abstract and indefinite to

constitute an actual injury for purposes of Article 111. There is absolutely no way for the plaintiffs–or the court for that matter-to qualify or quantify these alleged injuries. Rather, they appear to be pure puffery on the part of the plaintiffs.

2. Injury That Is Fairly Traceable to the Defendant's Conduct

In order to have standing to initiate a lawsuit, the plaintiff must be able to show that his alleged injury is fairly traceable to the defendant's unlawful conduct. Lujan, 504 U.S. at 560-6 1.

To satisfy this causation requirement, there must be a sufficiently clear causal connection between the illegal action taken by the defendant and the injury suffered by the plaintiff. California Assoc. of Physically Handicapped v. **FCC,** 778 F.2d 823, 825-26 (D.C. Cir. 1985) (finding that the plaintiff "has not met the requirement set out second-the causality requirement" because the "injury alleged by CAPH is not fairly traceable to the FCC action[.]").

The Supreme Court has specifically held that the plaintiff does not have standing if the injury "results from the

independent action of some third party not before the court." Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26,41-42 (1976). In the context of Congressional action, the Supreme Court has specifically noted that "it is far from clear that this injury is 'fairly traceable' to appellants, as our precedents require, since the alleged cause of appellees' injury is not appellants' exercise of legislative power but the actions of their own colleagues in Congress in passing the Act." Raines. 521 U.S. at 830.

The Court finds that in the instant case the plaintiffs have failed to demonstrate that their alleged injuries were caused by Senator Jeffords' decision to leave the Republican party. First, with respect to the plaintiffs' claim regarding the Republican national program, the Court finds that the plaintiffs have not shown that Senator Jeffords has personally prevented any legislation, let alone the entire Republican agenda, from being enacted. Initially, the Court notes that Senator Jeffords is just one out of one-hundred senators. As such, his single vote could not by itself defeat

or result in the enactment of any legislation. Stated differently, there are numerous reasons--completely independent of Senator Jeffords-why certain legislation may not become law or why Congress' legislative agenda may have changed since the 2000 elections.' Further, the actions of third parties, such as the other ninety-nine members of the senate, cannot be attributed to Senator Jeffords. Simon, 426 U.S. at 41-42. Consequently, there is no way for the plaintiffs to show that the alleged setback to the Republican national program is fairly traceable to Senator Jeffords' decision to leave the party.

Second, with respect to the claim that Senator Jeffords violated Vermont election law by changing parties after the election, the Court finds that to the extent the plaintiffs have failed to identify a **specific** injury caused by this allegedly illegal action, there is no way for the Court to ascertain whether such an injury is fairly traceable to the actions of Senator Jeffords. As such, the plaintiffs have not sustained their burden of showing that the alleged wrongdoing by

Senator Jeffords caused an injury to them.

The Court reaches the same conclusion with respect to the plaintiffs' claim that Senator Jeffords' decision to change parties violated their right to freedom of association. Since the Court cannot discern any basis upon which the plaintiffs' rights have been violated, it cannot and does not find that Senator Jeffords' actions are the cause of any injury to the plaintiffs in this regard.

One Such event that has clearly changed the legislative agenda is the terrorist attacks of September I 1, 2001. -15-

Finally, with respect to the claims that Senator Jeffords has diminished the confidence of the electorate, destroyed the foundation of good government, promoted party raiding, and undermined the purpose of the anti-raiding statutes, the Court **finds** that even assuming arguendo that these things are true, they are not fairly traceable to the actions of Senator Jeffords. It is disingenuous for the plaintiffs to assert that by changing parties Senator Jeffords single handedly caused all of these things to happen. There are

any number of incidents throughout the last thirty years-including Watergate, Iran Contra, and the Impeachment of President Clinton-that could have caused these things to occur. Moreover, in the complaint, the plaintiffs even recognize that Senator Jeffords was not the first, nor is he likely the last, Senator to switch political parties.

Thus, there is no way for the plaintiffs to show that any of the harms, assuming they actually occurred, are attributable to the actions of Senator Jeffords.

3) Injury Likely To Be Redressed By Court Order

In order to satisfy the redressability prong of the standing doctrine, the plaintiff must show that it is likely, as opposed to merely speculative, that their injury will be redressed by a favorable decision by the Court. LWM, 504 U.S. at 560. For example, in Page, the case where the plaintiff challenged the Senate's cloture rule, this Court found that the plaintiff had failed to meet this requirement. Page, 995 F. Supp. at 29. In particular, the Court noted that even if it declared the cloture rule unconstitutional, the Senate could still return to

its former practice of allowing unlimited debate unless there existed unanimous consent to close discussion on a specific matter. Id. Consequently, the Court concluded that the plaintiff did not have standing to bring the lawsuit because such a result would clearly not redress his alleged injuries. 1-d.

The plaintiffs in the instant case have failed to show that a favorable decision by this Court will adequately redress any of their alleged injuries. First, with respect to the plaintiffs' claim regarding the Republican national program, the Court finds that it is pure speculation that certain legislation will be enacted if Senator Jeffords returns to the Republican party. As noted above, there are numerous factors, independent of Senator Jeffords, that can affect whether a particular piece of legislation is enacted. Thus, even if the Republican party regained working control of the Senate, the Court finds that it is unlikely that the plaintiffs' alleged injuries would be redressed. That is, the plaintiffs have failed to show a sufficient causal connection between

their alleged injuries and the judicial relief requested in this regard.

Second, with respect to the claim the Senator Jeffords violated Vermont election law, the Court finds that to the extent the plaintiffs have not demonstrated any injury to them by this alleged violation of the law, there is no basis upon which this Court could conclude that it can redress those injuries. Accordingly, the Court **finds** that the plaintiffs have not sustained their burden with respect to this claim.

The Court reaches the same conclusion concerning the plaintiffs' allegations that Senator Jeffords violated their constitutional right to freedom of association. The plaintiffs have not shown how this alleged violation took place as a result of Senator Jeffords changing political parties. Consequently, the Court **finds** that the plaintiffs have failed to demonstrate that it can redress any such injury **stemming** from this alleged constitutional violation.

Finally, with respect to the plaintiffs' claims that Senator Jeffords has diminished the **confidence** of the electorate,

destroyed the foundation of good government, promoted party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that even if these allegations are true, the plaintiffs have not shown how an order from this Court will redress or even alleviate those harms. For instance, even assuming that Senator Jeffords did diminish the confidence of the electorate by changing parties, there is no indication that a Court order requiring him to switch back to the Republican party will restore or raise the confidence of the electorate. The plaintiffs have completely failed to show how this Court possesses the power to redress these alleged injuries. As such, they have not sustained their burden in this regard.'

B. Other Issues Raised in Senator Jeffords' Motion to Dismiss

The Court will not address the other issues raised in Senator Jeffords' Motion to Dismiss because it has found that the plaintiffs do not have standing to bring the instant action.

C. The Plaintiffs' Motion For Summary Judgment

Similarly, the Court will not address the issues raised in the plaintiffs' Motion for Summary Judgment because they do not have standing to initiate this suit in the first instance. Thus, the plaintiffs are clearly not entitled to judgment as a matter of law. 'In their opposition to Senator Jeffords' motion to dismiss, the plaintiffs claim that they have standing to bring the instant action under the unique circumstances doctrine. Specifically, they assert that "under the 'unique circumstances' doctrine where fundamental rights would otherwise be denied, and possession of the constitutional right would have no adequate remedy and it would be difficult for a person to effectively bring suit, standing to bring suit exists." The Court finds, however, that there are two reasons why this argument must be rejected. First, the unique circumstances doctrine does not appear to be applicable to the instant case. The D.C. Circuit has recognized that "under the unique circumstances doctrine, appellate courts will excuse an untimely notice of appeal

where the appellant. could have filed a timely notice but was mislead to delay filing by a court order or ruling which purportedly extended or tolled the appeal deadline." PMD Produce Brokerage Corp. v. Dep't of Agriculture, 234 F.3d 48, 53 (D.C. Cir. 2000). That clearly is not the procedural posture of this case. Second, even assuming that the plaintiffs' statement of law is correct, the Court finds that the plaintiffs' have failed to make even a preliminary showing that their constitutional rights have been violated.

III. **CONCLUSION**

For the foregoing reasons, the Court finds that the plaintiffs do not have standing to bring the instant action against Senator Jeffords. In fact, the Court finds that the plaintiffs have failed to satisfy any of the requirements the Supreme Court has articulated as being necessary to have standing under Article III. As a result, the Court must dismiss the plaintiffs' amended complaint. A separate order shall issue this date.

Date: (12-13-01)

Royce C. Lamberth (s)
Royce C. Lamberth
United States District Judge

ORDER

Upon consideration of the Motion of Defendant Senator James M. Jeffords to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1),(5), & (6), Plaintiffs' Motion for Summary Judgment, and the memorandum of points and authorities and statements of material facts filed in support thereof and in opposition thereto, good cause having been shown, it is hereby

ORDERED that the Motion of Defendant Senator James M. Jeffords to Dismiss is granted, and it is

FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment is denied, and it is

FURTHER ORDERED that the amended complaint against Defendant Senator James Jeffords is dismissed with prejudice.

Dated this 13th day of December, 2001

Royce C. Lambert (s)
United States District Judge

IN THE DISTRICT COURT OF
THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

John Hoffman and Michael Hahalyak,
individually and jointly,
plaintiffs,

v.

James Jeffords, individually
and as United States Senator,
defendant.

CIVIL ACTION
CASE NO: 1:01CV01190
R.C.L.
Pro se General Civil

AMENDED COMPLAINT

COUNT I: MANDAMUS

Plaintiffs file their Amended Complaint and in support thereof aver the following:

1. Plaintiff, John Hoffman, is a resident of Allegheny County, Pennsylvania. He is and has been a registered Republican. Plaintiff Michael Hahalyak is a resident of Westmoreland County Pennsylvania. He is and has been a registered Republican. Plaintiff Hahalyak filed the original complaint as counsel for John Hoffman. He has been

Westmoreland County Pennsylvania. He is and has been a registered Republican. Plaintiff Hahalyak filed the original complaint as counsel for John Hoffman. He has been admitted to practice in all of the state and federal courts in the Commonwealth of Pennsylvania and in the United States Supreme Court. Because of the delay incident to his admission to the District of Columbia bar and the urgency of the issue to his admission to the District of Columbia bar and the urgency of the issue presented in this case plaintiffs have agreed to jointly file the Amended Complaint pro se. Each are also acting pro bono. Each of the plaintiffs however have an interest in the subject matter of this suit in that by reason of the unauthorized act of defendant in transferring the power of the majority party in the Senate to the Democrats plaintiffs have been adversely impacted in that the Republican programs to be ushered in by the Republican party nationally has been seriously obstructed by the defendants unauthorized act in altering party affiliation.

2. Defendant, James Jeffords, is a resident of the state of Vermont, who has been a registered Republican for the

past 35 or more years and is presently serving as the United States Senator from Vermont. The Defendant was recently reelected as the Republican nominee for U.S. Senator in which he [requested] the Secretary of State of Vermont to have his party affiliation represented as "Republican". A copy of this request is attached hereto and is made a part hereof.

3. Jurisdiction in this case is founded on: (1) diversity of citizenship and amount. The amount in controversy, which is difficult to specify, exceeds the jurisdictional requirement; (2) the existence of a Federal question arising under the 14th and the 17th Amendment to the Constitution of the United State, and (3) the existence of a question arising under the statutes of the United States and of the state of Vermont as well as the party requirements pertaining to political elections in the state of Vermont.

4. It is averred that in defendant's numerous campaigns for nomination, election and reelection, defendant repeatedly called upon the Republican Party and the registered Republican voters during the past 35 years for their support and vote. During this period he represented to the Vermont

electorate that he was running as the certified nominee of the Republican party and under the Republican banner defendant won a dozen elections since 1966. In his recent campaign for reelection as U.S. Senator defendant let the people of Vermont know that he backed the Republican presidential candidate George W. Bush, a conservative -- both in the primary and the general election.

5. Based upon his promises and representations of his Republican candidacy the Republican party and the Republican voters of Vermont gave him the necessary votes that brought him his many Republican victories.

6. However, on or about May 23, 2001, some five months after his installation as United States Senator, Senator Jeffords notified the press and the Senate members, after discussions and consultations with the opposition party Democratic Minority leader Thomas Daschle and Minority whip, Harry Reid, that because of his conscience he could no longer serve as a Republican but that he recently would hereafter serve as an Independent. this despite the fact that he recently specifically authorized and requested that his name be listed on the ballot as a "Republican". Defendant,

however, did not during his last election campaign, notify his party nor the Independent Party that he would run as an Independent nor did he obtain a certificate of nomination as an Independent nor did he register as an Independent nor did he comply with the statutes or party requirements relating to the nomination and election as an Independent. It is averred that James Jeffords knowingly ignored the legal requirements that were to be met before he could legally consider himself as an independent. Nor did James Jeffords follow the established precedent adhered to by former members of the United States House and Senate, particularly Senator Wayne Morse of Oregon, who in July 1953, when the majority leader Robert Taft died unexpectedly, leaving the Democrats with a 48 – 47 edge in the Senate, decided to become an Independent, continued as a GOP Senator because he publicly announced that it would be dishonorable for him to hand over control to the Democrats, having been elected as a Republican. Morse remained an Independent until the 1954 election year when by his change of party he delivered control of the Senate to the Democrats.

It is averred that defendant, on the other hand, abandoned the Republican party at a most crucial hour knowing that he, James Jeffords, would by his single stroke of abandoning the Republican party, place, if successful, the controlling power of the Senate into the hands of the Democratic party, rendering the Republican national program promised by George W. Bush and at that time endorsed by Senator James Jeffords, a devastating setback to the Republican party and its membership nationally. Jeffords complained that the Republican party would not accommodate his liberal views. It is averred that this reason lacks merit since Mr. Jeffords at all times had the freedom to vote under the Republican label in the identical manner that he intends to vote as an Independent. His abandonment rather referred to his transfer of the power to the Democratic Party by polling [pulling] as an Independent and not as a Republican. It is averred that Senator Jeffords by his transfer of party control of the Senate to the Democrats, did by his act intentionally breach his representations, promises, assurances and commitments made to his electorate, to the Republican

party and to his Republican aids. Based on information and belief plaintiffs aver: that Minority leader Thomas Daschle and Minority whip Harry Reid offered defendant in return for his abandonment of his party affiliation the prized chairmanship of the Environment and Public Works Committee.

7. Plaintiffs aver that because Senator Jeffords did not comply with the requirements prescribed under the law and under the party rules and regulations (be it the Independent party of Senator McCarthy or otherwise) in order to be nominated and elected as an Independent and because he never received a Certificate of Nomination as an Independent, Senator Jeffords' announcement that he was an Independent was, we aver, invalid, void and a nullity under the law, and the attempted transfer of power to the Democratic party was rendered equally invalid void and a nullity.

8. Plaintiffs aver that they have filed this action without any intent or desire to interfere with Senator Jeffords' discretionary voting authority as a U.S. Senator. Plaintiffs aver that this action is filed simply to assert the invalidity of

Senator Jeffords' change of party by mere announcement and to compel the Senator to adhere to his status chosen by him as the Republican nominee on the ballot -- a routine directory and ministerial act, until defendant fulfills the prescription of the law and of the party requirements of becoming an Independent, and until he receives the needed vote and approval from the electorate of Vermont that he is authorized to serve them in his new capacity as an Independent. It is averred that Senator Jeffords must have been fully aware of the fact that Richard Mallory, his immediate predecessor in the House, left the Republican party in 1970 to run as legislator but was defeated as an Independent by the Vermont electorate.

9. Plaintiffs aver that they have no adequate remedy under the law and that irreparable harm will result in the improper transfer of power unless immediate relief is granted.

10. Plaintiffs aver that the described action of Senator James Jeffords in changing party affiliation by a simple announcement was illegal for the reasons stated and for the following reasons:

a. The act of Senator Jeffords changing his party

affiliation by mere announcement without an election, violates the 14th and 17th Amendments to the the United States Constitution, as well as the existing election statutes. It also destroys the confidence of the electorate in a political system that would permit a Senator to be elected under the banner of a party that he freely chose and shortly after his election by his simple announcement permits him to transfer the control of the Senate to the opposition party and to abandon the voters and the party that worked for him and placed him in power.

b. It destroys the foundation of good government by lowering the standard of integrity of its representatives.

c. Plaintiffs aver that under the existing law political parties form an essential element in the foundation of a republican form of government and without political parties, each with its own platform, our government could not survive as a democratic representative society. The power assumed by

Senator Jeffords in changing his party affiliation by mere pronouncement is contrary to the 17th Amendment in which the politicians (state legislators) were placed as the electors of the U.S. Senator by the vote of the people. Plaintiffs aver that when Senator Jeffords had single-handedly denied his party affiliation he likewise equally denied the required vote each person who placed him in office as a Republican, for without his nomination in the primary as a Republican he could not be elected as a United States Senator. It is further averred that Senator Jeffords conferred with the opposition leaders before announcing his change of party affiliation and it was by their effort known as raiding and their offer of a committee chairmanship that finalized Mr. Jeffords unauthorized action. Plaintiffs aver that if the approach applied by Senator Jeffords is validated and openly practices by the other Senators the United States government would witness an instability never before experienced. A senators

success would be measured in the time devoted in manipulating and raiding opposing parties participants as had been done surreptitiously by Senator Daschle former minority leader, and Senator Reid, former minority whip, --now crowned majority leader Daschle and majority whip Reid. With each raiding party a new party would be placed into power and what is called a "historic event" would unfortunately bode ill for a representative democratic government.

Wherefore plaintiffs pray that judgment be entered against defendant individually and as a senator, and that he be required to reinstate his status as a Republican senator as represented on his ballot and in his Certificate of Nomination which status must remain intact until such time as he meets the requirements under the law as a legally qualified representative of the Independent party or as an Independent. It is further requested that defendant be ordered to notify the Senate of his continuing status as a Republican Senator.

COUNT II

QUO WARRANTO

1–12 Plaintiffs incorporate herein the averments in Count I and makes the same a part hereof.

Wherefore plaintiffs respectfully request that defendant be declared unqualified as a United State Senator, Independent, and that he notify forthwith the Senate of his existing status as a Republican as shown in his Certificate of Nomination until such time as he meets the legal requirements for nomination and election as an Independent.

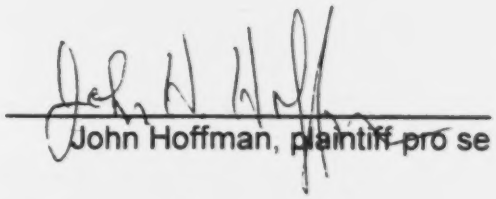
COUNT III

EQUITABLE RELIEF – INJUNCTION

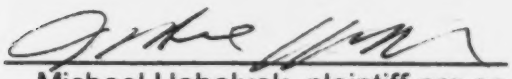
1-12 Plaintiffs incorporate herein the averments in Count I and makes the same a part hereof.

Wherefore plaintiffs pray that judgment be entered defendant and that an injunction be issued restraining defendant from claiming or representing his status as an Independent United State Senator other than as a Republican and that this fact be made known to the Senate

and particularly during the Senate polling and caucusing of its members according to party affiliation.



John Hoffman, plaintiff pro se



Michael Hahalyak, plaintiff pro se

Supreme Court, U.S.
FILED
MAY - 3 2002
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No. 01–1447

In the Supreme Court of the United States

OCTOBER TERM, 2001

JOHN HOFFMAN AND MICHAEL HAHALYAK, PETITIONERS,
v.
JAMES JEFFORDS, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court correctly held that plaintiffs lacked Article III standing to bring this suit, which sought an order compelling United States Senator James M. Jeffords to affiliate with the Republican Party, and make that affiliation public in caucusing in the Senate, in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda.

2. Whether the Speech or Debate Clause, art. I, §6, cl. 1, the political question doctrine, or the failure of the complaint to state a claim upon which relief can be granted also bars this action.

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ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondent United States Senator James M. Jeffords submits this brief in opposition to the petition for a writ of certiorari before judgment filed by petitioners John Hoffman and Michael Hahalyak.

STATEMENT OF THE CASE

This petition arises out of a complaint filed by John Hoffman in the United States District Court for the District of Columbia. An amended complaint added plaintiff Michael Hahalyak. Describing themselves as Pennsylvania Republican voters, petitioners alleged that United States Senator James M. Jeffords violated the 14th and 17th Amendments to the United States Constitution, as well as unnamed Vermont state statutes, by leaving the Republican Party during his term of office. Amd. Compl. ¶10.

Petitioners alleged that they had been "adversely impacted" by Senator Jeffords becoming an Independent "in that the Republican program to be ushered in by the Re-

publican party nationally has been seriously obstructed by the defendant's unauthorized act in altering party affiliation." *Id.* ¶1. They further claimed that Senator Jeffords' decision to change parties "destroys the confidence of the electorate," "destroys the foundation of good government by lowering the standard of integrity of its representatives," "promotes party raiding which would seriously weaken the stability of the elective process," "undermines the very purpose of anti-raiding statutes," "eliminates the heart of a well balanced political party," and lacked the approval of those who voted for him in the Vermont elections. *Id.* ¶10.

Petitioners asked the district court to order Senator Jeffords to affiliate with the Republican Party, and make that affiliation public in caucusing in the Senate, in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda.

In a nineteen-page memorandum opinion, the district court granted Senator Jeffords' motion to dismiss the amended complaint and denied the petitioners' motion for summary judgment. *Hoffman v. Jeffords*, 175 F. Supp. 2d 49 (D.D.C. 2001)(Lamberth, J.). The district court held that the petitioners did not satisfy any of the three irreducible minimum requirements to establish Article III standing. *Id.* at 54-60. Other grounds, not addressed by the district court because the petitioners lacked Article III standing, *id.* at 60, also required dismissal of the amended complaint: (i) the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution immunized Senator Jeffords from suit; (ii) the political question doctrine barred the suit; and (iii) the amended complaint failed to state a claim upon which relief could be granted.

Petitioners appealed the judgment to the United States Court of Appeals for the District of Columbia Circuit. No. 02-5006. In the court of appeals, petitioners moved to hold their appeal in abeyance pending disposition by this Court of their petition for writ of certiorari before judgment, while Senator Jeffords moved for summary affirm-

ance of the district court's dismissal of the amended complaint. At this time, the court of appeals has not decided either motion.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari before judgment should be denied because it fails to show "that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. Rule 11. Here, the court of appeals remains the most appropriate and efficient forum for appellate review of the district court's straightforward and inescapable judgment that the petitioners lack Article III standing to bring this suit.

The clear application of these settled legal principles to this case means that it would not present any "compelling reason" for even a post-judgment grant of certiorari under Rule 10. *A fortiori*, this case does not amount to that exceptionally rare occurrence in which the Court should review a case still pending in the court of appeals in order to resolve an issue of great constitutional significance. *E.g., Mistretta v. United States*, 488 U.S. 361, 371 & n.6 (1989) (addressing constitutionality of Federal Sentencing Commission to rectify "disarray" in lower court decisions).

I. Article III of the Constitution confines the jurisdiction of the federal courts to the resolution of actual "Cases" and "Controversies." U.S. Const. art. III, § 2. To meet this threshold jurisdictional requirement, petitioners must demonstrate that they suffered (i) an "'injury in fact' -- an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (ii) a causal connection between the injury alleged and the conduct complained of; and (iii) a likelihood that the injury is redressable through a favorable disposition of the matter. *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The district court correctly held that petitioners failed to satisfy any of these three irreducible constitutional minimum requirements.

First, petitioners did not establish "injury in fact." The gravamen of their claim -- a purported "obstruction" of the "Republican program" -- alleges a generalized diminution of political power that cannot establish "injury in fact" as to them. Amd. Compl. ¶¶1, 6; *Raines v. Byrd*, 521 U.S. 811, 821, 826 (1997) (stating that a "claim of standing . . . based on a loss of political power" or "diminution of . . . official power" is too abstract to state a cognizable claim under Article III). Nor did they suffer any "injury in fact" from Senator Jeffords' alleged violation of Vermont election laws. As Pennsylvania residents, petitioners had "absolutely no personal stake whatsoever" in Vermont elections. *Hoffman*, 175 F. Supp. 2d at 56. Furthermore, petitioners did not allege, and "utterly failed" to explain, how they suffered any personal injury resulting from the claimed abridgment of their First Amendment right to freedom of association. *id.*; *see also Haitian Refugee Center v. Gracey*, 809 F.2d 794, 800 (D.C. Cir. 1987) (holding that a "party cannot have standing on the basis of a legal right he does not claim is violated" in the complaint). Petitioners' remaining allegations concerning the diminished "confidence of the electorate," the "stability of the elective process," destruction of the "foundation of good government," and other similar claims are quintessential "generalized grievances" that cannot confer standing. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982). "Abstract injury is not enough," *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), and the district court correctly determined that the petitioners alleged nothing more.

Second, the district court correctly held that none of the petitioners' alleged injuries was "fairly traceable" to Senator Jeffords, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), as opposed to "some third party not before the court." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). Whether the objectives of the "Republican program" are achieved is "fairly traceable" to the collective actions of both Houses of Con-

gress and the President, not a single Senator. *Hoffman*, 175 F. Supp. 2d at 58. Because petitioners failed to identify any specific injuries caused by alleged violations of the First Amendment or Vermont election law, such injuries are not fairly traceable to Senator Jeffords. *Id.* Nor are harms associated with petitioners' generalized grievances. Furthermore, to the extent there exists any diminution in the "confidence of the electorate" or the "stability of the elective process," it cannot be said that such injuries are "fairly traceable" to Senator Jeffords' decision to leave the Republican Party. *Id.* at 58-59.

Third, the district court correctly held that petitioners' alleged injuries would not be redressed by a favorable decision in this case. *Id.* at 59. Even assuming Republican control of the Senate, it is not "likely" that unspecified Republican political objectives would be achieved because "there are numerous factors, independent of Senator Jeffords, that can affect whether a particular piece of legislation is enacted." *Id.* Similarly, petitioners' purported First Amendment and Vermont election law violations cannot be redressed because they were neither alleged in the amended complaint nor explained in any of the petitioners' motion papers. *Id.* The same is true with respect to petitioners' generalized grievances. Reinstating the Republican majority in the Senate would not itself restore "confidence in the electorate," rebuild the "foundation of good government," or remedy any of petitioners' other nonjusticiable allegations of generalized harms. *Id.* at 59-60.

II. Dismissal was also mandated by the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution, which provides that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." The Clause affords absolute immunity from judicial inquiry into "the deliberative and communicative processes by which Members participate in . . . matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S. 606, 625 (1972). Petitioners unabashedly seek to question

Senator Jeffords about his "speech" with his Senate colleagues stating his political affiliation and his decision to "debate" pending business in the Democratic, rather than the Republican, caucus. Such speech and associative activities in party conferences are at the very core of the Senate's "deliberative and communicative processes by which Members participate in" the Senate's legislative proceedings. *Id.* Senator Jeffords' attendance and participation in a party caucus in the Senate, therefore, "shall not be questioned in any other Place."

The political question doctrine also supported dismissal. *First*, there has been "a textually demonstrable constitutional commitment of th[is] issue to a coordinate political department," *Baker v. Carr*, 369 U.S. 186, 217 (1962), because adjudication of this suit would improperly intrude into the constitutionally committed responsibilities of the Senate to choose its officers, art. I, § 3, cl. 5, determine its rules of proceedings, art. I, § 5, cl. 2, and judge elections, returns, and qualifications of its Members, art. I, § 5, cl. 1. *Second*, there is a "lack of judicially discoverable and manageable standards for resolving" this case, *Baker*, 369 U.S. at 217, because there is simply no principle from which a court could derive guidance in order to take command of the Senate's internal organization to overturn Democratic control of the Senate and reinstate a Republican majority. *Third*, this action cannot be adjudicated in accord with the "respect due coordinate branches of government," *id.*, because the relief petitioners request would require this Court to intrude deeply into the organization and management of the Senate's internal affairs.

This suit is also subject to dismissal on the merits. The First, Fourteenth, and Seventeenth Amendments to the Constitution do not prohibit a United States Senator from changing his party affiliation during his term of office. Nor do the Vermont election laws cited by petitioners. Such laws do not purport to regulate any conduct occurring after balloting and elections, and in any event, could not be interpreted so as to impose a restriction of party

membership or loyalty on a senator's service. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995) (explaining that the "States lack the power to add qualifications" for service in the Congress to those fixed in the Constitution).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari before judgment should be denied.

Respectfully submitted,

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